



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9846]

RIN 1545-BO51

Regulations Regarding the Transition Tax Under Section 965 and Related Provisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9846) that were published in the **Federal Register** on Tuesday, February 5, 2019 (84 FR 1838).

The final regulations implement section 965 of the Internal Revenue Code (the “Code”).

Section 965 was amended by the Tax Cuts and Job Act, which was enacted on

December 22, 2017.

DATES: This correction is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Natalie Punchak at (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9846) that are the subject of this correction are issued under section 965 of the Code.

Need for Correction

As published, the final regulations (TD 9846) contain errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.965-0 is amended by adding the entries for §1.965-2(j)(5)(i), the introductory language of §1.965-2(j)(5)(ii), and §1.965-4(b)(2)(i) to read as follows:

§1.965-0 Outline of section 965 regulations.

* * * * *

§1.965-2 Adjustments to earnings and profits and basis.

* * * * *

(j) * * *

(5) * * *

(i) Facts.

(ii) Analysis.

* * * * *

§1.965-4 Disregard of certain transactions.

* * * * *

(b) * * *

(2) * * *

(i) Overview.

* * * * *

Par. 3. Section 1.965-1 is amended by revising paragraph (f)(13)(ii) to read as follows:

§1.965-1 Overview, general rules, and definitions.

* * * * *

(f) * * *

(13) * * *

(ii) Specified commodity. The term specified commodity means a commodity held, or, for purposes of paragraph (f)(18) of this section, to be held, by a specified foreign corporation that, in the hands of the specified foreign corporation, is property described in section 1221(a)(1) or 1221(a)(8). This paragraph (f)(13)(ii) does not apply with respect to commodities held by a specified foreign corporation in its capacity as a dealer or trader in commodities.

* * * * *

Par. 4. Section 1.965-2 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§1.965-2 Adjustments to earnings and profits and basis.

* * * * *

(b) * * *

(2) The treatment of a distribution by the specified foreign corporation to another specified foreign corporation that is made before January 1, 2018, and, in the case of a taxable year of a specified foreign corporation before its last taxable year that begins before January 1, 2018, any other distribution from the specified foreign corporation made before the relevant E&P measurement date, is determined under section 959.

* * * * *

(4) The treatment of distributions described in paragraph (b)(2) of this section that are disregarded under §1.965-4 is redetermined (if necessary) and the treatment of

all distributions from the specified foreign corporation other than those described in paragraph (b)(2) of this section is determined under section 959.

* * * * *

Par. 5. Section 1.965-7 is amended by revising paragraphs (c)(3)(iv)(A)(2) and (c)(3)(iv)(B)(4)(viii) to read as follows:

§1.965-7 Elections, payment, and other special rules.

* * * * *

(c) * * *

(3) * * *

(iv) * * *

(A) * * *

(2) Requirement to enter into a transfer agreement. The shareholder with respect to which a triggering event occurs and an eligible section 965(i) transferee (as defined in paragraph (c)(3)(iv)(B)(1) of this section) must enter into an agreement with the Commissioner that satisfies the requirements of paragraph (c)(3)(iv)(B) of this section.

(B) * * *

(4) * * *

(viii) An acknowledgement that the eligible section 965(i) transferor and any successor to the eligible section 965(i) transferor will remain jointly and severally liable for the section 965(i) net tax liability being assumed by the eligible section 965(i) transferee;

* * * * *

Par. 6. Section 1.965-8 is amended by revising the heading of paragraph (e) and paragraphs (e)(1) and (g)(1)(ii)(B)(2) to read as follows:

§1.965-8 Affiliated groups (including consolidated groups).

* * * * *

(e) Treatment of a consolidated group or other affiliated group as a single section 958(a) U.S. shareholder or a single person--(1) In general. All members of a consolidated group that are section 958(a) U.S. shareholders of a specified foreign corporation are treated as a single section 958(a) U.S. shareholder for purposes of section 965(b), §1.965-1(b)(2), and §1.965-3. Furthermore, all members of a consolidated group are treated as a single person for purposes of paragraphs (h), (k), and (n) of section 965 and §1.965-7. In addition, all members of an affiliated group that are section 958(a) U.S. shareholders of a specified foreign corporation are treated as a single section 958(a) U.S. shareholder for purposes of §1.965-2(f). Thus, for example, any election governed by section 965(h) and §1.965-7(b) must be made by the agent (within the meaning of §1.1502-77) of the group as a single election on behalf of all members of the consolidated group. Similarly, the determination of whether the transfer of assets by one member to a non-member of the consolidated group would constitute an acceleration event under §1.965-7(b)(3)(ii)(B) takes into account all of the assets of the consolidated group, which for purposes of this determination, includes all of the assets of each consolidated group member. In analyzing issues relating to the transfer of assets of a consolidated group, appropriate adjustments are made to prevent the duplication of assets or asset value.

* * * * *

(g) * * *

(1) * * *

(ii) * * *

(B) * * *

(2) Determining section 965(a) inclusion amounts under section 965(b)(5).

Under section 965(b) and paragraph (b) of this section, for purposes of determining the section 965(a) inclusion amount of a section 958(a) U.S. shareholder with respect to a deferred foreign income corporation, if, after applying §1.965-1(b)(2), the section 958(a) U.S. shareholder is an E&P net surplus shareholder, then the U.S. dollar amount of the section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of the deferred foreign income corporation is further reduced (but not below zero) by the deferred foreign income corporation's allocable share of the section 958(a) U.S. shareholder's applicable share of the affiliated group's aggregate unused E&P deficit. USS3 is the only E&P net deficit shareholder in the USP Group, and, therefore, the aggregate unused E&P deficit of the USP Group is equal to USS3's excess aggregate foreign E&P deficit (\$100x). The applicable share of the USP Group's aggregate unused E&P deficit of each of USS1 and USS2, respectively, is an amount that bears the same proportion to the USP Group's aggregate unused E&P deficit as the product of the group ownership percentage of USS1 and USS2, respectively, multiplied by the amount that would (but for section 965(b)(5) and paragraph (b) of this section) constitute the aggregate section 965(a) inclusion amount of USS1 and USS2, respectively, bears to the aggregate of such amounts with respect to both USS1 and USS2. Therefore, USS1's applicable share of the USP Group's aggregate unused E&P deficit is \$40 ($\$100x \times (\$200x / (\$200x + \$300x))$) and USS2's applicable share of the USP Group's aggregate unused E&P deficit is \$60x ($\$100x \times (\$300x / (\$200x + \$300x))$). Because USS1 is a section 958(a) U.S. shareholder with respect to only one deferred foreign income corporation, the entire \$40x of USS1's applicable share of the USP Group's aggregate unused E&P deficit is treated as CFC1's allocable share of USS1's applicable share of the USP Group's aggregate unused E&P deficit, and thus USS1's section 965(a) inclusion amount with respect to CFC1 is reduced to \$160x ($\$200x - \$40x$). Because USS2 is a section 958(a) U.S. shareholder with respect to only one deferred foreign income corporation, the entire \$60x of USS2's applicable

share of the USP Group's aggregate unused E&P deficit is treated as CFC3's allocable share of USS2's applicable share of the USP Group's aggregate unused E&P deficit, and thus USS2's section 965(a) inclusion amount with respect to CFC3 is reduced to \$240x (\$300x - \$60x).

Martin V. Franks
Chief, Publications and Regulations Branch
Legal Processing Division
Associate Chief Counsel
(Procedure and Administration)

[FR Doc. 2019-07012 Filed: 4/9/2019 8:45 am; Publication Date: 4/10/2019]